

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT**

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**BAP NO. MB 99-015**

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**IN RE CRAFTS PRECISION INDUSTRIES, INC.,  
Debtor.**

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**CRAFTS PRECISION INDUSTRIES, INC.,  
Plaintiff-Appellant,**

**v.**

**U.S. HEALTHCARE, INC.,  
Defendant-Appellee.**

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**Appeal from the United States Bankruptcy Court  
for the District of Massachusetts, Eastern Division  
[Hon. Arthur N. Joan N. Feeney, U.S. Bankruptcy Judge]**

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**Before**

**LAMOUTTE, VAUGHN and CARLO, U.S. Bankruptcy Judges.**

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**James E. Howard was on brief for appellant.**

**David C. Fixler, with whom Rubin and Rudman LLP, were on brief for appellee.**

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**July \*, 1999**

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**Per Curiam.**

Crafts Precision Industries, Inc. ("Crafts") and U.S. Healthcare, Inc. ("USH") both challenge an Order issued by the United States Bankruptcy Court granting, in part, a motion for summary judgment filed by USH. Crafts argues that the court erred in concluding that vacation pay, accrued more than 90 days before the date of the filing of the debtor's petition in bankruptcy, should not be considered a priority under 11 U.S.C. § 507(a)(4). USH argues that the court erred in concluding that retired employees are not included within the meaning of the phrase "number of employees covered" found in § 507(a)(4). \*Finding no error, we affirm the bankruptcy court's Order. Or we affirm in part and reverse in part\*

**JURISDICTION**

The Bankruptcy Appellate Panel has jurisdiction to review final decisions from the United States Bankruptcy Court pursuant to 28 U.S.C. § 158(b)(1). See also Sanford Institution for Savings v. Gallo, 156 F.3d 71, 74 (1<sup>st</sup> Cir. 1998). The bankruptcy court's legal conclusions are reviewed de novo. Palmacci v. Umpierrez, 121 F.3d 781, 785 (1<sup>st</sup> Cir. 1997).

**BACKGROUND**

Crafts filed a voluntary petition for relief under Chapter 11 on June 20, 1995. With its petition, Crafts filed an emergency motion seeking authority to pay prepetition wage related claims.

The motion requested permission to pay sums within the scope of § 507(a)(3), as well as approximately \$132,000 in vacation payments which did not qualify under 11 U.S.C. § 507(a)(3). The Court authorized most of the wages and benefits, but only allowed the debtor to pay prepetition vacation claims that qualified as a priority under 11 U.S.C. § 507(a)(3). The court scheduled a further hearing to determine whether to allow the debtor's request to pay vacation pay that accrued more than 90 days before the date of the filing of the debtor's petition in bankruptcy.

Crafts argued that there was substantial risk that employees would leave Crafts if the entire amount of accrued vacation pay was not paid to employees. Crafts requested that the court exercise its inherent equitable powers under 11 U.S.C. § 105, to authorize the payment of all vacation accrued as of the date of the filing of the petition. After a hearing held on July 12, 1995, the court approved Crafts request to make the vacation payments. Crafts paid full vacation benefits to employees as they took the vacations.

On June 20, 1997, after the confirmation of the debtor's Chapter 11 plan, Crafts filed an adversary proceeding against USH, pursuant to 11 U.S.C. §§ 547 and 550, seeking the recovery of \$33,725.70 in alleged preferential prepetition payments of premiums from the debtor to USH.<sup>1</sup> USH filed a motion for summary judgment

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<sup>1</sup>The prepetition payments by Crafts to USH were made pursuant to a contract whereby USH provided health insurance benefits to certain Crafts' employees, including retired employees, in exchange for the payment of premiums.

on June 10, 1998, arguing that if it were required to return the payments, USH would have a priority claim under 11 U.S.C. § 507(a)(4). Crafts' plan of reorganization provided for payment of such priority claims in full. Thus, USH argued that since it would be entitled to full payment of its priority claim, this was a complete defense to the preference action. Crafts agreed to dismiss the adversary if it were determined that USH's claim would be a priority claim.

Crafts opposed the motion for summary judgment, contending that USH would not have a priority claim under 11 U.S.C. § 507(a)(4), since certain payments made by the debtor for vacation payments qualified as a priority under 11 U.S.C. § 507(a)(4), as contributions to an employee benefit plan. The vacation payments which Crafts sought to include within 11 U.S.C. § 507(a)(4), included payments for vacation time accrued more than 90 days before the date of the filing of the petition, but within 180 days before the filing. Crafts argued that after its payments under 11 U.S.C. § 507(a)(4) were considered, the cap amount of \$4,000<sup>2</sup> imposed by 11 U.S.C. § 507(a)(4)(B) would be met.

Pursuant to an order dated December 1, 1998, the bankruptcy court concluded that the vacation payments that the debtor sought to include within 11 U.S.C. § 507(a)(4), were not entitled to

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<sup>2</sup> The current amount is \$4,300, but the amount was \$4,000 at the time of the transactions which are subject of this case.

priority under 11 U.S.C. § 507(a)(4) since they did not constitute a "contribution to an employee benefit plan." Thus, the Court granted USH's motion for summary judgment as to the vacation payments. Crafts filed a motion for reconsideration, which the bankruptcy court denied on January 28, 1999. Crafts filed a timely notice of appeal.

Crafts also opposed USH's motion for summary judgment, contending that USH would not have a priority claim under 11 U.S.C. § 507(a)(4), or that it would be significantly reduced, since in determining the cap amounts under 11 U.S.C. § 507(a)(4)(B), USH's calculations are based on a definition of the "number of employees covered" by the USH plan which includes retired employees.<sup>3</sup> Crafts argued that in determining the "number of employees covered", for purposes of 11 U.S.C. § 507(a)(4)(B), only active employees should be included.

Pursuant to an order dated December 1, 1998, the bankruptcy court concluded that the language used in § 507(a)(4)(B)(i), referring to "the number of employees covered by each such plan" did not include retired employees. Thus, the Court denied USH's motion for summary judgment as to the determination of the number of employees covered under the plan. USH filed a timely notice of

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<sup>3</sup>The retired employees paid the \$39 per month premium to Crafts to maintain certain coverage under the USH policy. Crafts collected these payments and included them in the premium checks which Crafts sent to USH. Crafts did not make contributions to the USH plan for the retired employees.

appeal on February 8, 1999.

### **DISCUSSION**

#### A. Vacation Payments

The bankruptcy court ruled that \* The Court reasoned that \*  
The statute provides that:

#### B. Employees Covered

### **CONCLUSION**

The bankruptcy court correctly concluded that payment of vacation pay, which accrued more than 90 days before the date of the filing of the debtor's petition in bankruptcy, did not qualify as a priority under 11 U.S.C. § 507(a)(4). The bankruptcy court \*correctly or incorrectly\* concluded that retired employees are not included within the definition of the "number of employees covered by each such plan" for purposes of 11 U.S.C. § 507(a)(4)(B)(i). Accordingly, we AFFIRM or \*affirm in part, reverse in part\* the bankruptcy court's decision. \*If affirm, each side bears cost, if affirm as to vacation and reverse as to retired employees, costs to USH\*

**SO ORDERED.**